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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE EASTERN DISTRICT OF TEXAS**

4 **HEIDI KRUM,** §
5 §
6 § **Civil Action No.**
7 §
8 §
9 § **Jury Trial Demanded**
10 **CAPITAL ONE BANK (U.S.A.), N.A.,** §
11 §
12 § **Defendant.** §
13 §
14 §
15 §
16 §
17 §

18 **COMPLAINT**

19 HEIDI KRUM (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN,
20 P.C., alleges the following against CAPITAL ONE BANK (U.S.A.), N.A. (“Defendant”):

21 **INTRODUCTION**

22 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act
23 (“TCPA”), 47 U.S.C. § 227 *et seq.*

24 **JURISDICTION AND VENUE**

25 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v.
26 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

27 3. Defendant conducts business in the State of Texas and as such, personal
28 jurisdiction is established.

29 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

30 **PARTIES**

31 5. Plaintiff is a natural person residing in Gladewater, Texas 75647.

32 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

33 7. Defendant is a corporation that has its corporate headquarters located at 1680

Capital One Drive, McLean, VA 22101.

8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number.

11. Plaintiff has only used this phone as a cellular telephone.

12. Defendant placed repeated calls to Plaintiff's cellular telephone regarding an alleged debt.

13. When contacting Plaintiff, Defendant contacted Plaintiff using an automatic telephone dialing system and automatic and/or pre-recorded messages.

14. Plaintiff knew Defendant was using an automatic telephone dialing system and automatic and/or pre-recorded messages as Defendant's calls began with a noticeable pause or delay before being connected to a live agent.

15. Defendant's telephone calls were not made for "emergency purposes."

16. Soon after the calls began, Plaintiff demanded that Defendant stop placing calls to her cellular telephone.

17. Once Defendant was aware that its calls were unwanted and to stop, there was no lawful purpose to making further calls, nor was there any good faith reason to place calls.

18. Despite Plaintiff's clear request to stop calling, Defendant failed to restrict its calls to Plaintiff's cell phone number and continued to call her.

19. Upon information and belief, Defendant conducts business in a manner which violates the Telephone Consumer Protection Act.

COUNT I
DEFENDANT VIOLATED THE
TELEPHONE CONSUMER PROTECTION ACT

20. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

21. Defendant initiated automated calls to Plaintiff using an automatic telephone dialing system and automatic and/or pre-recorded messages.

22. Defendant's calls to Plaintiff were not made for emergency purposes.

23. Defendant's calls to Plaintiff after she revoked consent were not made with Plaintiff's prior express consent.

24. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

25. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

26. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, HEIDI KRUM, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
 - b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);

- c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. §227(b)(3);
 - d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
 - e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, HEIDI KRUM, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 5-11-2020

By: /s/ Amy L. Bennecoff Ginsburg
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